

## MEMORANDUM

**TO:** Judge Hinojosa, Chair  
Tim McGrath, Staff Director

**FROM:** Linda Drazga Maxfield  
Office of Policy Analysis

**DATE:** March 14, 2005

**SUBJECT:** Data extract on March 3: Numbers on Post-Booker Sentencings

Attached is a table with a look at post-Booker cases received, coded, and edited as part of the Commission's post-Booker project. The numbers are prepared using data extracted at close-of-business on March 3, 2005.

- 62.6 percent are within the guideline range. (This compares to 65.0% in FY02.)
- 2.2 percent are above the guideline range. (This compares to 0.8% in FY02.)
  - Comprising the 2.2 percent of sentences above the guideline range is 1.1 percent classified as an upward departure from the guideline range. A total of 1.1 percent of all cases either cite no reason, or cite US v Booker or 18 USC § 3553 as a reason, for the sentence above the guideline range.
- 35.2 percent of the sentencings are below the guideline range. Most of these sentences are government-sponsored below-range sentences (22.2%), compared to other below-range sentences (13.0%).
  - *Government-sponsored below-range sentences:* Among the 22.2 percent of cases with a government-sponsored downward departure, the largest proportion (approximately 71% of this category) are due to §5K1.1 substantial assistance departure sentences.
  - *Other below-range sentences:* 13.0 percent of all sentences are below the guideline range for reasons other than a government-sponsored downward departure. The 13.0 percent is comprised of 4.7 percent classified as a “downward departure” from the guideline range. The remaining 8.3 percent either cite no reason, or cite US v Booker or 18 USC § 3553 as a reason, for the below-range sentence.

## Comparison of Sentence Imposed and Position Relative to the Guideline Range

Data Extracted on March 3, 2005

	N	%
<b>TOTAL<sup>1</sup></b>	<b>3,164</b>	<b>100.0</b>
<b>WITHIN GUIDELINE RANGE</b>	<b>1,979</b>	<b>62.6</b>
<b>ABOVE GUIDELINE RANGE</b>	<b>70</b>	<b>2.2</b>
“Upward departure” from the guideline range	36	1.1
Otherwise above the guideline range <sup>2</sup>	34	1.1
<b>BELOW GUIDELINE RANGE</b>	<b>1,115</b>	<b>35.2</b>
<b>Government Sponsored</b>	<b>702</b>	<b>22.2</b>
§5K1.1 Substantial Assistance departure	498	15.7
§5K3.1 EDP/Fast-Track departure	153	4.8
Departure pursuant to a plea agreement	51	1.6
<b>Other</b>	<b>413</b>	<b>13.0</b>
“Downward departure” from guideline range	149	4.7
Otherwise below the guideline range <sup>3</sup>	264	8.3

<sup>1</sup>Of the 3,262 cases sentenced on or after January 12, 2005, and cumulatively received, coded and edited at the U.S. Sentencing Commission, there are 98 cases excluded from the table due to missing information preventing the comparison of the sentence and the guideline range.

<sup>2</sup>All cases explicitly citing either US v Booker or 18 USC § 3553 as a reason for a sentence above the guideline range are classified into this category. This category also includes cases that do not provide a reason for the above-guideline sentence.

<sup>3</sup>All cases explicitly citing either US v Booker or 18 USC § 3553 as a reason for a sentence below the guideline range are classified into this category. This category also includes cases that do not provide a reason for the below-guideline sentence.

SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extraction on March 3, 2005; prepared on March 11, 2005). Numbers may not sum to 100 percent due to rounding.